



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,455	12/01/2000	Paul M. Yates	2711	2487

26822 7590 09/29/2003

WALTER A. HACKLER  
2372 S.E. BRISTOL, SUITE B  
NEWPORT BEACH, CA 92660-0755

EXAMINER

MARSH, STEVEN M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

**Office Action Summary**

Application No.

09/728,455

Applicant(s)

YATES, PAUL M.

Examiner

Steven M Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 22-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 22-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the fifth office action for U.S. Application 09/728,455 for a Cushion with Lubricated Particulates and Method of Manufacture filed by Paul M. Yates on December 1, 2000.

#### ***Claim Objections***

Claim 5 is objected to because of the following informalities: Claim 5 is dependent upon itself. For examination purposes it is assumed that Claim 5 is dependent upon independent claim 1. Claim 25 is objected to because of the following informalities: Claim 25 is dependent upon claim 20, which has been canceled. It is assumed for examination purposes that claim 25 is dependent upon independent claim 22. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-5, 22-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,954,303 to Wolf et al in view of U.S. Patent 5,633,286 to Chen. Wolf et al. discloses a cover (32) that is stretched and can be molded to a selected contour. The cover prevents leakage and has a backing (16) and disposed within the cover there is a core with a volume of separate, open-cell foam particulates (see fig. 2 and column 4, lines 56-67) which are compressible and wherein a liquid can be partially disposed (through absorption). There is a gel 34 between the particulates which can enable

lubricated movement of the particulates with respect to one another in response to an outside force applied to the cover and prevents sensing of the particulates by a user.

Wolf et al. does not specifically disclose the exact combination of foam particulates and gel, however, Wolf et al. discloses that the pad could be formed of a combination of materials including gel and open or closed cell foam. Chen discloses that a composite can be made of a gel formed in combination with other materials, including open cell foam and sponges. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized the composite taught by Chen, for the pad taught by Wolf et al., for the purpose of providing a pad that gives the user increased comfort.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5 and 22-35 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone

Application/Control Number: 09/728,455

Page 4

Art Unit: 3632

number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.



Steven M. Marsh

September 17, 2003



Korie Chan

Primary Examiner